

No. 5:02-CR-32-1H
No. 5:12-CV-596-H

Respondent .

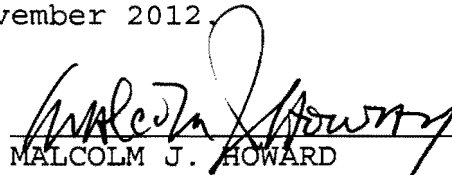
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term of supervised release. On June 5, 2012, the United States Probation Office filed a motion for revocation of petitioner's supervised release, which is scheduled for hearing at this court's November 2012 criminal term.

The court, having reviewed the record, agrees that petitioner's motion is meritorious. Under Simmons' definition of a felony offense, petitioner's prior North Carolina convictions are not felonies for the purposes of § 922(g)(1) because petitioner could not have been imprisoned for more than one year on any of these offenses. As petitioner's exposure for his prior convictions did not exceed one year, petitioner is factually innocent of the federal crime of being a felon in possession of a firearm in violation of § 922(g)(1).

Petitioner's motion to vacate [DE #63] is GRANTED, and this court's judgment entered September 17, 2003, is hereby VACATED. The motion for revocation of supervised release, filed June 5, 2012, and amended July 26, 2012, is DISMISSED.

This 5th day of November 2012.


MALCOLM J. HOWARD
Senior United States District Judge

At Greenville, NC
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